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Kentucky Energy and Environment Cabinet Comments to the U.S. Environmental Protection Agency: Notice of Public Hearings Regarding 36 EPA Objections to Draft Kentucky NPDES Permits for Discharges Associated with Coal Mining. Public Notice Issuance Date: April 16, 2012

Water Docket – Docket ID: EPA-HQ-OW-2012-0315
Environmental Protection Agency
Mail Code: 2822-1T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Good evening, I am Len Peters, secretary of Kentucky's Energy and Environment Cabinet, and on behalf of Governor Steve Beshear, I want to thank Region IV for conducting this hearing to receive comments on your objections to Clean Water Act permits for surface mining operations in eastern Kentucky.

Today's hearing is unprecedented in Kentucky. Also unprecedented is the state feeling compelled by matters of principle to sue the U.S. EPA, which we did in 2010 because of what we deemed to be arbitrary and inconsistent application of policies governing mining operations. My comments today regarding EPA's objections to these permits therefore are consistent with the concerns we have expressed for more than two years now regarding this issue.

As someone responsible for overseeing the state's environmental protection programs, I support, and am in fact obligated to enforce, regulations necessary to protect our land, air, and

water resources. We can and must do all that is reasonably possible to protect our environment and the lives and health of our citizens. We have federal and state laws and regulations that not only guide this process, but that bind us so that our decisions are not arbitrary, political, or otherwise without basis.

Environmental permitting is not designed to stop legitimate business activities, whether we are talking about a mining activity, a manufacturing facility, or a water treatment plant. Rather, permitting is to ensure these activities are done in accordance with existing laws and regulations. Regulators and the regulated community need certainty in the process. In addition, regulators and the regulated community need to be assured that decisions are made fairly and reasonably, based on accepted scientific studies and analysis. The Energy and Environment Cabinet and the U.S. EPA have an important partnership, and we share the same mission—to protect human health and the environment and to ensure environmental protection laws and regulations are implemented and enforced fairly and reasonably.

Kentucky cannot simply reject surface mining permit applications that are in accordance with existing laws and regulations. Despite the rhetoric from some, surface mining, including mountain top removal mining, is a legal form of mining that occurs on privately owned land. We follow the federal Surface Mining Control Reclamation Act, the Clean Water Act, and other federal provisions in operating the Kentucky program.

Coal can be and is being mined in an environmentally responsible manner—we continue to make improvements, and the industry has been willing to do things better. For example, the Beshear administration initiated a novel approach to ensuring enhanced environmental

protection of surface mining operations through a fill minimization protocol—a protocol that should have been embraced by the EPA but was not.

All sources of energy production and use, even renewables, have an environmental impact. But existing laws and regulations are in place to minimize impacts and to reclaim mined land. That is why it is disconcerting to us that EPA has applied a specific benchmark (that is, conductivity) to Appalachian coal mining—a *de facto* standard that has been based on what should be very narrowly interpreted incomplete science, not one that should be a surrogate measure of overall water quality. I read an opinion piece in the paper this week that even misrepresents the facts by saying that conductivity is a measure of contamination. The EPA knows, and I know, that this is not true, and yet many people do not know otherwise.

Governor Beshear and I recognize and respect that EPA has a responsibility and obligation to revise and update regulations and program requirements as necessary to protect human health and the environment. However, EPA should not create new regulatory requirements that have not undergone the appropriate congressional or rulemaking processes. As it is, EPA is preventing, through its objection process, Kentucky, a delegated state, from issuing permits, with no recourse for us or for the regulated community, or for the thousands of Kentuckians who depend on mining for their livelihoods. We should not allow a few studies, studies that have credible counter points, to determine the economic destiny of one region of the country. We have allowed rhetoric and misinformation to overwhelm what should be a legitimate discussion of very important issues—jobs, human health, the environment, and the rational application of administrative oversight.

I will close by saying that I appreciate the efforts of the staff within Region IV. They worked closely with our cabinet to arrive at a solution to move these permits forward. We were assured by headquarters that if we were to reach agreement, which we did, that EPA would honor that agreement. Unfortunately, that ultimately was simply not the case, and many months later, we are all still experiencing the consequences of headquarter's actions.